

First Judicial District of Pennsylvania

51CR00081562012

Jo Ann Fonzone

*Trial (Waiver) Volume 1
October 02, 2013*



*First Judicial District of Pennsylvania
100 South Broad Street, Second Floor
Philadelphia, PA 19110
(215) 683-8000 FAX:(215) 683-8005*

*Original File fonzone.txt.txt, 76 Pages
CRS Catalog ID: 14010501*

Page 1

[1] IN THE COURT OF COMMON PLEAS
[2] FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
[3] CRIMINAL TRIAL DIVISION
[4] - - -
[5] COMMONWEALTH : CP-51-CR-0008156-2010
[6] vs. :
[7] JO ANN FONZONE :
[8] - - -
[9] Courtroom 508, Criminal Justice Center
[10] Philadelphia, Pennsylvania
[11] - - -
[12] Wednesday, October 2, 2013
[13] - - -
[14] Trial
[15] - - -
[16]
[17]
[18] B E F O R E: THE HONORABLE ANGELO FOGLIETTA, J.
[19] **APPEARANCES:**
[20]
[21] ELIZABETH KOTCHIAN, ESQUIRE
Assistant District Attorney
For the Commonwealth
[22] DEBORAH RAINEY, ESQUIRE
[23] Counsel for the Defendant
[24]
[25]

Page 3

[1] **THE CRIER:** Your Honor, this is Case Number
[2] 28.
[3] May I swear in the defendant?
[4] **THE CRIER:** Good morning.
[5] **MS. RAINEY:** Good Morning, Your Honor. Debra
[6] Rainey for Ms. Jo Ann Fonzone.
[7] **MS. KOTCHIAN:** Elizabeth Kotchian for the
[8] Commonwealth.
[9] **THE COURT:** Thank you.
[10] **THE CRIER:** Please state your first and last
[11] name for the record.
[12] **THE DEFENDANT:** Jo Ann Fonzone, F-O-N-Z-O-N-E.
[13] - - -
[14] JO ANN FONZONE, having been duly sworn, was
[15] examined and testified as follows:
[16] - - -
[17] **THE COURT:** Before we begin, Ms. Fonzone,
[18] Mr. Patton, the court appointed prior to Ms. Rainey was
[19] here this morning and he requested that he be removed
[20] from the case and I granted that request because of your
[21] irreconcilable differences with you I assume. You
[22] didn't want him to be your lawyer anyway; is that
[23] correct?
[24] **THE DEFENDANT:** If I can't communicate with an
[25] attorney, I don't feel that they're acting in my best

Page 2

[1] INDEX
[2] COMMONWEALTH'S EVIDENCE
[3]
[4] WITNESS DR. CR. RDR. RCR.
[5] Joseph Oteri 7 22 57 --
[6]
[7]
[8] EXHIBITS
[9] NO. DESCRIPTION PAGE
[10] (None presented.)
[11]
[12]
[13] DEFENDANT'S EVIDENCE
[14]
[15] WITNESS DR. CR. RDR. RCR.
[16] DETECTIVE JOHN LANDIS 63 68 -- --
[17]
[18] EXHIBITS
[19]
[20] NO. DESCRIPTION PAGE
[21] D-1 Statement 32
[22] D-2 Photograph 41
[23] D-3 Photograph 52
[24] D-4 PARS 67
[25]

Page 4

[1] interest.
[2] **THE COURT:** So you didn't want him to
[3] represent you?
[4] **THE DEFENDANT:** Right.
[5] **THE COURT:** I appointed from the bar of the
[6] court Ms. Rainey to represent you.
[7] Now, have you had a chance to discuss your
[8] case with Ms. Rainey?
[9] **THE DEFENDANT:** Yes, briefly.
[10] **THE COURT:** Are you prepared to go forward
[11] today?
[12] **THE DEFENDANT:** Yes, Your Honor.
[13] **THE COURT:** Okay. Thank you.
[14] **MS. RAINEY:** May I, Your Honor, inquire?
[15] **THE COURT:** Yes.
[16] **MS. RAINEY:** Ms. Fonzone, ma'am, you
[17] understand that you and I have had a brief conversation
[18] **suggesting the following:** In the Commonwealth of
[19] Pennsylvania for a summary offense, you're not entitled
[20] to a trial by jury.
[21] Do you remember us having that conversation?
[22] **THE DEFENDANT:** Right. Yes.
[23] **MS. RAINEY:** Did you understand that
[24] conversation?
[25] **THE DEFENDANT:** Yes.

Page 5

[1] **MS. RAINEY:** Do you understand that you're
[2] here today for trial in front of the Honorable Judge
[3] Foglietta?
[4] **THE DEFENDANT:** Yes.
[5] **MS. RAINEY:** And you're not entitled to a jury
[6] trial?
[7] **MS. FONZONE:** I understand.
[8] **MS. RAINEY:** Based on the conversations that
[9] you and I had, you're okay with proceeding here today?
[10] **THE DEFENDANT:** Yes.
[11] **MS. RAINEY:** You're okay with the advisory
[12] assistance that I've provided thus far?
[13] **THE DEFENDANT:** Yes.
[14] **MS. RAINEY:** Thank you very much, Your
[15] Honor.
[16] **THE COURT:** Any questions that you would like
[17] to ask of the defendant?
[18] **MS. KOTCHIAN:** No, Your Honor.
[19] **THE COURT:** Okay. Are we prepared?
[20] **MS. KOTCHIAN:** Yes, Your Honor. I have a
[21] motion for mutual sequestration.
[22] **THE COURT:** All right. I'm ordering mutual
[23] sequestration.
[24] **MR. RAINEY:** Your Honor, I was talking briefly
[25] with counsel and I spoke for a significant amount of

Page 7

[1] - - -
[2] COMMONWEALTH'S EVIDENCE
[3] - - -
[4] DIRECT EXAMINATION
[5] - - -
[6] **BY MS. KOTCHIAN:**
[7] **Q.** Mr. Oteri, good afternoon.
[8] **A.** Good afternoon.
[9] **Q.** I'm going to direct you back to October of 2010. At
[10] that time were you employed by the Philadelphia Phillies
[11] organization?
[12] **A.** Yes.
[13] **Q.** What was your job for the --
[14] **A.** Security.
[15] **MS. RAINEY:** Your Honor, I apologize. We
[16] didn't do the arraignment. I waive formal arraignment
[17] and enter into a plea of not guilty to the summary
[18] offense of disorderly conduct. I apologize.
[19] **THE COURT:** I apologize. I thought you did
[20] that. So Mr. Oteri has been sworn in and already
[21] responded to the question that in October of 2010 he was
[22] employed by the Philadelphia Phillies; is that correct?
[23] **THE WITNESS:** That's correct.
[24] **BY MS. KOTCHIAN:**
[25] **Q.** Sir, I know sometimes you can see where my question

Page 6

[1] time with Ms. Fonzone. It's my representation to the
[2] Court that I don't believe that she has an issue
[3] understanding and appreciating the process that we're
[4] about to engage in and I think that she is more than
[5] competent to proceed as we're about to proceed. I just
[6] wanted to put that on the record.
[7] **MS. KOTCHIAN:** Your Honor, I'm not asking for
[8] a competency evaluation.
[9] **MS. RAINEY:** You agree with everything that
[10] I've said thus far, ma'am?
[11] **THE DEFENDANT:** Yes.
[12] **MS. RAINEY:** Thank you.
[13] **THE COURT:** You're welcome.
[14] **MS. KOTCHIAN:** The Commonwealth calls Joseph
[15] Oteri.
[16] **THE CRIER:** Please state your first and last
[17] name for the record.
[18] **THE WITNESS:** Joseph Oteri, O-T-E-R-I.
[19] - - -
[20] JOSEPH OTERI, having been duly sworn, was
[21] examined and testified as follows:
[22] - - -
[23] **MS. KOTCHIAN:** May I proceed, Your Honor?
[24] **THE COURT:** Yes.
[25] **MS. KOTCHIAN:** Thank you.

Page 8

[1] is going. If you can just wait for me to finish the whole
[2] question before you start to answer so the court reporter can
[3] get down what everybody says.
[4] So what was your job at the Phillies at that
[5] time?
[6] **A.** Security.
[7] **Q.** And how long had you done security for the Phillies
[8] at that time?
[9] **A.** At that time it was six years.
[10] **Q.** Do you still work for the Phillies?
[11] **A.** Yes.
[12] **Q.** What do you do now?
[13] **A.** Security.
[14] **Q.** And during the Philadelphia Phillies games, what are
[15] your job duties?
[16] **A.** We're stationed at one section. My section was from
[17] 101 to 115. We patrol back and forth just waiting for if a
[18] problem erupts.
[19] **Q.** Do you have a uniform?
[20] **A.** Yes.
[21] **Q.** What is that uniform?
[22] **A.** We have dark blue uniforms with khaki pants.
[23] **Q.** Say that again.
[24] **A.** We got dark blue shirt with khaki pants.
[25] **Q.** Does the shirt say anything on them?

Page 9

[1] **A.** Security.
[2] **Q.** Okay. Directing you specifically to October 6,
[3] 2010, was there a Phillies game that night?
[4] **A.** No, it was a day game.
[5] **Q.** What time did the game start?
[6] **A.** 4:05.
[7] **Q.** Is that the regular season or the playoffs?
[8] **A.** Playoffs.
[9] **Q.** Were you assigned to the sections you just said?
[10] **A.** Yes.
[11] **Q.** Say what that was again.
[12] **A.** It was 101 through 113.
[13] **Q.** Where are those sections in the stadium?
[14] **A.** It's between first base towards the outfield.
[15] **Q.** And during that game, were you directed to Section
[16] 107?
[17] **A.** Yes.
[18] **Q.** Why were you directed to that section?
[19] **A.** We got a call on the radio that the hostess had a
[20] problem in their section.
[21] **Q.** What is a hostess?
[22] **A.** You got the hostess and then you got the ushers; the
[23] females and the males. They stand at the top of the sections
[24] and they watch over their area. If there is a problem from a
[25] fan, somebody would come up and explain it to them. If they

Page 11

[1] **A.** Yes.
[2] **Q.** Can you point out that person?
[3] **A.** She's right there.
[4] **MS. KOTCHIAN:** Indicating the defendant Jo Ann
[5] Fonzone at the bar of the court.
[6] **BY MS. KOTCHIAN:**
[7] **Q.** Where did you observe Ms. Fonzone?
[8] **A.** She was sitting in 107. I would say about six or
[9] ten rows from the bottom in the middle of that aisle.
[10] **Q.** Where?
[11] **A.** In the middle of that section, like section may be
[12] seat six to ten.
[13] **Q.** And what did you observe about her when you first
[14] got there?
[15] **Q.** She was standing up and she was erratic. She was
[16] arguing with fans behind her. I went to talk to her and to
[17] tell her, you know, she's got to calm down, sit down, and
[18] stop disturbing the other fans.
[19] **Q.** Did you enter the row where she was seated?
[20] **A.** Yes.
[21] **Q.** Were there people seated between the aisle and where
[22] Ms. Fonzone was?
[23] **A.** Yes.
[24] **Q.** How did you get to where Ms. Fonzone was?
[25] **A.** I just asked them if I could squeeze in.

Page 10

[1] can't solve it, they call us.
[2] **Q.** And were you called to go to Section 107?
[3] **A.** Yes.
[4] **Q.** What did you see when you got to that section?
[5] **A.** I didn't see nothing right away. I talked to the
[6] hostess up top. She said she had a problem with a fan at the
[7] bottom. It was a female. Other fans came up and were
[8] complaining.
[9] **MS. RAINEY:** I'm going to object to that and
[10] move to strike for hearsay.
[11] **THE COURT:** I am going to sustain the
[12] objection as to hearsay.
[13] Sir, you can't say something that someone else
[14] told you that's not here in court to testify today.
[15] **THE WITNESS:** Okay.
[16] **MS. KOTCHIAN:** I'll rephrase the question.
[17] **BY MS. KOTCHIAN:**
[18] **Q.** Sir, based on talking to the hostess, what did you
[19] do?
[20] **A.** I went down to confront the guest.
[21] **Q.** And was that in Section 107?
[22] **A.** Yes.
[23] **Q.** Who was the guest?
[24] **A.** Ms. Jo Ann Fonzone.
[25] **Q.** Is that person in the courtroom right now?

Page 12

[1] **Q.** So when you say you are speaking with Ms. Fonzone,
[2] how far away from her were you?
[3] **A.** About one seat. So maybe a foot.
[4] **Q.** Okay. Was she facing in your direction?
[5] **A.** Yes.
[6] **Q.** And did she say anything in response to you?
[7] **A.** Yes.
[8] **Q.** What did she say?
[9] **A.** When I asked her if she can calmly sit down so that
[10] other people can watch the game -- is it all right if I use
[11] the language that she used?
[12] **Q.** Yes.
[13] **A.** She told me to go fuck myself and she could do
[14] whatever she wants because she paid for those seats.
[15] **Q.** At that point, were the people in the row behind
[16] her -- were they sitting or were they standing?
[17] **A.** They were all sitting.
[18] **Q.** Was anybody else standing?
[19] **A.** No.
[20] **Q.** What happened when Ms. Fonzone told you to go fuck
[21] yourself?
[22] **A.** I asked her if she doesn't calm down, we're going to
[23] have to escort her to the top. I was trying to explain to
[24] her that she can't act with that type of language. There's
[25] families around and kids around. I asked her if she could

Page 13

[1] come up to the top and I'll explain it her and she could come
[2] back and sit down, but she refused.
[3] **Q.** What was she doing during that time?
[4] **A.** She was still screaming, moving her arms around. So
[5] at that time I went back up. It took about four minutes to
[6] talk to my supervisor.
[7] **Q.** Sir, let me just back up for a second. Why did you
[8] want Ms. Fonzone to come up to the top?
[9] **A.** Just to explain to her the rules and the conduct
[10] that we have for the stadium.
[11] **Q.** All right. So what happened after you talked to
[12] your supervisor?
[13] **A.** He said to back down and bring her up, but he had an
[14] officer come down with me and another guard came down.
[15] **Q.** Do you remember who the officer was?
[16] **A.** It was a male officer. I don't remember his name.
[17] **Q.** Was that officer in uniform?
[18] **A.** Yes.
[19] **Q.** And did that officer go down to the seats with
[20] you?
[21] **A.** Yes.
[22] **Q.** Is that one of the officers that's here today?
[23] **A.** No.
[24] **Q.** So what did you do after you spoke with your
[25] supervisor?

Page 15

[1] **MS. RAINEY:** Objection. Move to strike.
[2] Calls for speculation. Unless she's going to offer this
[3] man as a psychiatrist.
[4] **THE COURT:** I don't think he was making a
[5] phychiatric diagnosis. I think he was stating his
[6] observation of the defendant. I certainly am not going
[7] to take it as testimony that she was not operating in
[8] her right state of mind. It was simply his observation
[9] of the behavior of the defendant that he's testifying to
[10] on that date.
[11] **BY MS. KOTCHIAN:**
[12] **Q.** Mr. Oteri, in your nine years of working at the
[13] Phillies stadium, have you encountered persons intoxicated?
[14] **A.** Yes, all the time. We are certified, too, for
[15] people that are under the influence of alcohol or other
[16] substances, so we know what to look for.
[17] **Q.** Did you have training for that?
[18] **A.** Yes.
[19] **Q.** What kind of training?
[20] **A.** We took classes and then we have to pass a test.
[21] **Q.** Did you form an opinion that Ms. Fonzone was under
[22] the influence of alcohol or some other substance?
[23] **A.** Yes.
[24] **MS. RAINEY:** I'm going to object. He hasn't
[25] been offered in any manner as an expert or anything like

Page 14

[1] **A.** We went back down. The officer asked her to come up
[2] top, but she refused.
[3] **THE COURT:** Try to speak into the microphone.
[4] **THE WITNESS:** She refused his request.
[5] **BY MS. KOTCHIAN:**
[6] **Q.** Do you remember specifically what she said?
[7] **A.** She said, "I'm not leaving I'm staying here. I paid
[8] for these tickets."
[9] **Q.** And can you describe her tone of voice at that
[10] time?
[11] **A.** Screaming in the way she was earlier today.
[12] **Q.** What do you mean?
[13] **A.** Loud, obnoxious.
[14] **Q.** What do you mean earlier today? Do you mean today
[15] the day of trial?
[16] **A.** Yes.
[17] **Q.** Where did you --
[18] **A.** Like, when she came up earlier with her other lawyer
[19] and the way she was getting with him. That's the way she was
[20] the whole time.
[21] **Q.** Okay. What did you observe about her demeanor or
[22] the way that she was acting?
[23] **A.** It was like somebody that was not drinking -- I
[24] can't say. She wasn't in her right state of mind at the
[25] time.

Page 16

[1] that and she's not charged with anything relating to
[2] alcohol. So it's not relevant.
[3] **MS. KOTCHIAN:** Your Honor, intoxication is the
[4] subject of a lay opinion. I laid a foundation that he's
[5] someone that comes into contact with intoxicated people
[6] everyday in his nine years in working at the Phillies
[7] games. A lay opinion is proper as to intoxication and
[8] whether or not she was intoxicated certainly helps the
[9] Court with the charge of disorderly conduct.
[10] **THE COURT:** Especially in the light of the
[11] fact that the witness has testified that he received
[12] training in how to recognize people who are under the
[13] influence.
[14] Again, this witness isn't being offered as an
[15] expert to testify as to whether or not -- she's not
[16] being charged with any crime of intoxication, but if she
[17] was, it certainly isn't dispositive of that fact or
[18] evidence of that fact. But he did receive training and
[19] he's testifying that from the training that he received,
[20] that was his opinion on that date.
[21] **MS. RAINEY:** Your Honor, if we -- the Court is
[22] sitting as the trier of fact.
[23] **THE COURT:** Absolutely.
[24] **MS. RAINEY:** How is whether or not he received
[25] training on recognizing the signs of alcohol or whether

[1] or not she had alcohol would help you make your
[2] decision?
[3] **THE COURT:** He didn't say alcohol. He said
[4] intoxication.
[5] **MS. RAINEY:** Fair enough.
[6] **THE COURT:** Intoxication can be a number of
[7] reasons.
[8] **MS. RAINEY:** How is that relevant to help this
[9] Court determine beyond a reasonable doubt whether
[10] disorderly conduct is made out? That's not one of the
[11] elements. And let's go beyond that. It's more
[12] prejudicial than probative. It shouldn't even be talked
[13] about.
[14] **THE COURT:** Okay. I'm overruling the
[15] objection.
[16] **MS. RAINEY:** Yes, sir.
[17] **BY MS. KOTCHIAN:**
[18] **Q.** Did you form an opinion as to whether she was under
[19] the influence of alcohol or some other substance?
[20] **A.** In my opinion, she was intoxicated. She didn't have
[21] any alcohol on her breath when I got closer to her. It was
[22] just -- she was crazy at the time.
[23] **MS. RAINEY:** Objection and move to strike.
[24] **THE COURT:** Sustained. That would be
[25] stricken.

[1] about, the handicap section?
[2] **A.** The handicap section is about, let's say four feet
[3] for the wheeling, the front and the back for the access for
[4] the wheel chairs to go in. At that time we didn't have
[5] nobody sitting in that section, so we asked her if she could
[6] stay there while we discussed what we can do with her.
[7] **Q.** What did she do when you said that?
[8] **A.** She was first watching the game. She wasn't paying
[9] any attention to us. Then after, when we told her that -- we
[10] tried to get her into another section or to sit in the
[11] handicap section so she can stand up and do whatever she
[12] wanted and she won't be disruptive to other people.
[13] At that time we asked her if she wanted to stay in
[14] the handicap section and she refused and said she wanted to
[15] go back to her seat because she paid too much money for
[16] them.
[17] **THE COURT:** Excuse me?
[18] **THE WITNESS:** She said, "I want to go back to
[19] my seat. I paid too much money for them."
[20] **BY MS. KOTCHIAN:**
[21] **Q.** Then what happened?
[22] **A.** We then told her we could either put her in another
[23] seat on the top row or in handicap. That's her only option.
[24] And that she cannot go back to her seat.
[25] **Q.** Why did you come to that determination?

[1] **MS. KOTCHIAN:** Okay.
[2] **BY MS. KOTCHIAN:**
[3] **Q.** So what happened after the male officer told her to
[4] leave and she refused?
[5] **A.** She refused so I asked the other guests that were in
[6] front of her in the aisle from seats, say one to five, if
[7] they could move out of the aisle so the officer can go in and
[8] remove her.
[9] **Q.** At that point was there a female officer?
[10] **A.** The female officer was called at the time, but she
[11] wasn't there present at the bottom.
[12] **Q.** So it was just you and the uniformed male officer?
[13] **A.** Yes.
[14] **Q.** And what happened then?
[15] **A.** The officer asked her to come out of the seat. She
[16] still refused. So he grabbed her arm and asked her to come.
[17] She finally came to the aisle. We brought her to the top and
[18] asked her if she could stay inside the handicap section while
[19] we discussed what we would do with her.
[20] **Q.** At that point was she being thrown out of the
[21] stadium?
[22] **A.** No, she wasn't.
[23] **Q.** At that point was she under arrest for anything?
[24] **A.** No.
[25] **Q.** Could you describe the area that you're talking

[1] **A.** We felt that if we brought her back into the
[2] seat --
[3] **THE COURT:** You keep on saying "we."
[4] **THE WITNESS:** Oh, me and my supervisor.
[5] I explained to her that she could not go back
[6] to her seat because I felt that she was going to act in
[7] the same way and have another disturbance where I would
[8] have to eject her out of the ballpark, which I really
[9] didn't want to do because I knew it was the payoff game.
[10] I was trying to be as reasonable as I could at that
[11] time, but she refused to listen.
[12] **BY MS. KOTCHIAN:**
[13] **Q.** What did she say?
[14] **A.** She said, "I'm going back down to my seat," and she
[15] started back down to the aisle and that's when Officer Ortiz,
[16] the female officer, tapped her on the shoulder and she swung
[17] at her.
[18] **Q.** When you say Officer Ortiz tapped, you mean she
[19] tapped the defendant on the shoulder?
[20] **A.** Yes.
[21] **Q.** Could you describe that motion?
[22] **A.** She just tapped and told her you can't go back down
[23] out to your seat. At that time Ms. Fonzone swung back like
[24] to push her arm off of her.
[25] **Q.** Okay. She did that to Officer Ortiz?

Page 21

[1] **A.** Yes.
[2] **Q.** What happened after you saw that?
[3] **A.** After that, Sergeant B -- that's what we call him at
[4] the stadium -- he said, "That's it." He grabbed one arm and
[5] Officer Ortiz grabbed the other arm. They tried to walk her
[6] back to the police room where we were going to bring her and
[7] she started swinging all around. That's when Sergeant B put
[8] handcuffs on her and they walked her down.
[9] **Q.** Was she cooperative?
[10] **A.** No.
[11] **Q.** What did she do?
[12] **A.** She was still swinging violently. She was screaming
[13] saying that we stole her hat and we stole her bag. "I want
[14] to go back to my seat. I want my ticket."
[15] She was just raving on the whole time.
[16] **Q.** Did you go with the sergeant and officer to the
[17] police room?
[18] **A.** Yes.
[19] **Q.** What did you observe there?
[20] **A.** She was the same way. We had put her in the chair
[21] first, which we normally do with anybody we bring down there
[22] to get their ID and information off of them and then the
[23] detective that's on duty takes the report. Then I give my
[24] statement in and then normally they let the defendant know if
[25] they're going to be receiving a citation if it was like

Page 23

[1] **Q.** Where is the report or statement that you write to
[2] sort of memorialize what role you played in this incident?
[3] Did you create one?
[4] **A.** Yes.
[5] **Q.** Was it a Police Department memo or a Phillies memo
[6] or a security memo?
[7] **A.** There was two.
[8] **Q.** What were they?
[9] **A.** First we write out a standard security report of the
[10] incident that happened, like who's involved, and exactly what
[11] happened in there.
[12] **Q.** Is that on a Philadelphia Police Department form?
[13] **A.** Yes.
[14] **Q.** Like a 48?
[15] **A.** No. We use a security report. It's called an
[16] incident report.
[17] **Q.** My question is, is that report generated by the
[18] Philly PD or your organization?
[19] **A.** Us.
[20] **Q.** You work for a private security company contracted
[21] with the Phillies, or do you work for the Philadelphia
[22] Phillies?
[23] **A.** I work for the Philadelphia Phillies.
[24] **Q.** In their security department?
[25] **A.** Yes.

Page 22

[1] alcohol involved or anything like that and then they usually
[2] going out the back door.
[3] **Q.** Did you stay there until Ms. Fonzone left the
[4] premises?
[5] **A.** I was there for about may be 20 minutes. I had to
[6] give my statement then I had to go back out.
[7] **Q.** Okay.
[8] **MS. KOTCHIAN:** No other questions for this
[9] witness.
[10] **THE COURT:** Cross-examine?
[11] **MS. RAINEY:** Thank you.
[12] - - -
[13] CROSS-EXAMINATION
[14] - - -
[15] **BY MS. RAINEY:**
[16] **Q.** Mr. Oteri is it?
[17] **A.** Yes.
[18] **Q.** So you said that you got involved with my client
[19] because you got some information from a hostess or hostess'
[20] radio or something; is that right, sir?
[21] **A.** That's correct.
[22] **Q.** Where is the statement, report, memorandum or
[23] anything from the hostess that triggered all of this? Do you
[24] have one?
[25] **A.** No.

Page 24

[1] **Q.** Where is that form that you initially filled out
[2] from your security for the Phillies to say what happened?
[3] Did you pass it to the DA's office?
[4] **A.** When I write up the report -- when we go down to the
[5] police room -- or if there's not a police room, at the end of
[6] the day, we hand it out to our main supervisor that has all
[7] reports. It has the dates, the times on it and with the
[8] ticket that it was issued with that report.
[9] **Q.** You don't know beyond that what happened to that
[10] report; is that what you're saying?
[11] **A.** No, that gets filled.
[12] **Q.** Does it get turned over to the Philadelphia Police
[13] Department or the DA's office?
[14] **A.** If they ask for it, they would turn it over to me.
[15] **Q.** You don't tell them you did it?
[16] **A.** They know I did one. If the Court or anybody ask
[17] for that report, they would call the Phillies up and on that
[18] date they would have that report listed and my statement that
[19] was given to the detective that's on duty that has my
[20] testimony for that day.
[21] **Q.** You said you gave a statement. Did you have a one
[22] on one with a --
[23] **A.** Yes.
[24] **Q.** And you signed something?
[25] **A.** Yes.

Page 25

[1] **MS. RAINEY:** Do you have that?
[2] **MS. KOTCHIAN:** Yeah.
[3] **BY MS. RAINEY:**
[4] **Q.** You struck me when you said based on what the
[5] hostess said, you went down to confront this lady?
[6] **A.** Yes.
[7] **Q.** So you already had it in your mind that you were
[8] going to confront her, right?
[9] **A.** When we are told that there is a disturbance
[10] downstairs, we have to go down as security to go down to
[11] confront that person.
[12] **Q.** You went to confront her suggesting you were already
[13] revved up to confront her not to just talk to her, right?
[14] **MS. KOTCHIAN:** Objection to the term "revved
[15] up."
[16] **THE COURT:** It's cross-examination.
[17] Overruled.
[18] **THE WITNESS:** No.
[19] **BY MS RAINEY:**
[20] **Q.** So when you went to talk to Ms. Fonzone, you were
[21] going there because of what you heard. When you got there
[22] your testimony is that you see her standing?
[23] **A.** Yes.
[24] **Q.** Was she in Section 107 or 108 or do you not
[25] remember?

Page 27

[1] **Q.** I think, if I'm not mistaken because I'm not a
[2] baseball fan. I'm an Eagles fan, but I think we went all the
[3] way. We just lost, right?
[4] **A.** Yes.
[5] **Q.** So you don't remember what section she was in but
[6] you absolutely remember she was the only one standing; is
[7] that what you are saying?
[8] **A.** Yes.
[9] **Q.** You don't know whether it was at bat or defense?
[10] Check my baseball educate. I haven't been to a game in a
[11] long time. It's proper to stand when we're on defense; fair
[12] enough?
[13] **A.** In difference stadiums, it's different. At the
[14] Phillies, we have different behavior --
[15] **Q.** Are we allowed to stand at batting?
[16] **A.** No.
[17] **Q.** Are we allowed to stand on defense?
[18] **A.** No.
[19] **Q.** We're not allowed to stand at all?
[20] **A.** No. If there is something going on at the time,
[21] people would jump up and cheer and then when the play ends,
[22] they sit back down.
[23] **Q.** But people do stand is what I'm asking?
[24] **A.** Yes.
[25] **Q.** You can't tell this Court that the reason she was

Page 26

[1] **A.** It was right around those two sections. I can't
[2] give you the exact. It's been three years now.
[3] **Q.** That's fair. But the sections are distinctively
[4] marked?
[5] **A.** Yes.
[6] **Q.** So she was in Section 107 or 108?
[7] **A.** I could'nt --
[8] **Q.** Did you mark that down in your security report what
[9] section she was in?
[10] **A.** Yes, and it's on her ticket when we confiscated her
[11] ticket at the time.
[12] **Q.** Okay. And who did you give that confiscated ticket
[13] to?
[14] **A.** The ticket goes with the report that I handed in at
[15] the end of the day.
[16] **Q.** When you get there, I think you said, and forgive me
[17] I was trying to read your prior testimony, that when you got
[18] there she's the only one standing?
[19] **A.** Yes.
[20] **Q.** Was the Phillies at bat or on defense?
[21] **A.** I don't remember.
[22] **Q.** It was the playoffs, right?
[23] **A.** Yes.
[24] **Q.** Excited atmosphere?
[25] **A.** Yes.

Page 28

[1] standing was because she was excited about what was
[2] happening, can you?
[3] **A.** (Witness nods head.)
[4] **Q.** Before you got there and as you're walking and you
[5] see her standing, you can't remember whether or not something
[6] excited happened on the field and that's why she stood up,
[7] right?
[8] **A.** Yes and no. Can I elaborate on that a little bit?
[9] **Q.** Please do because I'm confused.
[10] **A.** You're allowed to stand if something happens, but
[11] when play is active and the batter is up and nothing is going
[12] on, they want you to sit down so other people behind you can
[13] see the play as well.
[14] **Q.** In your six years of doing this, though, I'm sure
[15] you've heard of newbie fans who may not necessarily know the
[16] rules and they're over excited, they stand up, that happens;
[17] is that fair?
[18] **A.** Yes.
[19] **Q.** You don't know if that could have happened with
[20] Ms. Fonzone; is that a fair statement?
[21] **A.** Yes.
[22] **Q.** Thank you. All right. Now, you made a comment on
[23] direct that I objected to and I don't want to hear what the
[24] people said.
[25] Did you make any effort to record the name of the

Page 29

[1] other fans who said what you claimed they said? Did you
[2] write their names down and seat sections? If you did, what
[3] did you do with them?
[4] **A.** Okay. I went back down when she was at the top of
[5] the section. She said she came on the bus. I went down to
[6] the top of the section where she was sitting and I asked the
[7] people around her that we have one of your people that was on
[8] your bus on top that might be going down to the police room
[9] and they said, "Who," and I --
[10] **Q.** That's not my question. Let me make sure that you
[11] understand what I'm asking.
[12] **THE COURT:** No, he's responding to your
[13] question.
[14] **MS. RAINEY:** He's talking about after.
[15] **BY MS. RAINEY:**
[16] **Q.** What I'm asking you is when you first got there, I
[17] heard you say on direct as you were approaching when you
[18] first got the words from the hostess were --
[19] **A.** Yes.
[20] **Q.** -- that people around her were saying whatever they
[21] said. I objected, so that didn't come in. Did you get those
[22] people's names to bolster your report that she was annoying
[23] other fans?
[24] **THE COURT:** At the time that he first went
[25] down?

Page 31

[1] **Q.** In the report that you told us that you made and you
[2] gave to your supervisor --
[3] **A.** Yes.
[4] **Q.** -- did you put down the seat that these other fans
[5] were in and what they said or their names or anything about
[6] them?
[7] **A.** When I told my supervisor that she was sitting --
[8] can I start roughly from the beginning so you can understand
[9] more?
[10] **THE COURT:** Answer the questions that she's
[11] asking you, sir.
[12] **THE WITNESS:** Okay. I was told after she was
[13] confronted five times about sitting down and to stop
[14] disturbing the other fans from sitting -- we were
[15] getting complaints from the other fans that they
[16] couldn't watch the game because she wouldn't sit down in
[17] her seat.
[18] **BY MS. RAINEY:**
[19] **Q.** Who did this information come to you from?
[20] **A.** The fans that came and approached the hostess that
[21] was at the top of the section.
[22] **Q.** Okay. So you heard what someone else told someone
[23] else is what you're saying?
[24] **A.** Yes.
[25] **Q.** Did you record the name of the hostess who told you

Page 30

[1] **MS. RAINEY:** Yes, that's what I'm asking.
[2] **THE COURT:** She's limiting it to that time.
[3] **THE WITNESS:** No. I didn't get their names.
[4] I asked them, but I didn't get their names.
[5] **BY MS. RAINEY:**
[6] **Q.** When you talked to those people, were they also
[7] standing or sitting or you don't recall?
[8] **A.** No, they were all sitting.
[9] **Q.** Okay. Let me do this: Section 107, bigger than 108
[10] or same size?
[11] **A.** Same size.
[12] **Q.** How many chairs across?
[13] **A.** 22.
[14] **Q.** The people you're saying that were complaining, were
[15] they right next to her, behind her, on the other side of her?
[16] **A.** Behind her.
[17] **Q.** As the juror chairs are arranged in the jury box, is
[18] it that close or farther apart?
[19] **A.** Closer.
[20] **Q.** And you didn't put this down in any report that you
[21] have with you right now; is that a fair statement?
[22] **THE COURT:** Put what?
[23] **MS. RAINEY:** I'll withdrawal and I would
[24] restate it.
[25] **BY MS. RAINEY:**

Page 32

[1] this information?
[2] **A.** That's on the report.
[3] **Q.** And what was that person's name?
[4] **A.** I couldn't tell you who the hostess was at that
[5] time. They change every ten games. They move and they go
[6] from section to section every ten games.
[7] **MS. RAINEY:** I'm going to mark this, if I may,
[8] as Defense Exhibit-1. It's a clear piece of paper with
[9] a paragraph and a signature. If I can approach the
[10] witness, if you don't mind?
[11] **THE COURT:** Sure.
[12] **MS. RAINEY:** And I apologize. I don't have
[13] enough to go around.
[14] - - -
[15] (Statement Exhibit D-1 marked for identification.)
[16] - - -
[17] **BY MS. RAINEY:**
[18] **Q.** Is there a signature on that document?
[19] **A.** Yes.
[20] **Q.** Whose is it?
[21] **A.** Mine.
[22] **Q.** What is that document? What are you looking at?
[23] **A.** This is a document that I gave -- my statement to
[24] the detective.
[25] **Q.** Okay. When you say a document you gave, what you

Page 33

[1] really meant to say is that it's a summary of what you said
[2] to the detective?
[3] **A.** Yes.
[4] **Q.** How long do you recall being with a detective when
[5] you were telling them what you remembered happened?
[6] **A.** When we brought her down to the police room --
[7] **Q.** Is that when you gave your statement?
[8] **A.** That's when I gave my statement.
[9] **Q.** To a detective or Sergeant B?
[10] **A.** To the Detective.
[11] **Q.** He came to the cell room?
[12] **A.** Yes.
[13] **Q.** How long were you in there with him?
[14] **A.** Well, the detective stays in the cell room the whole
[15] day.
[16] **Q.** Okay. All right. And when you gave your statement
[17] to the detective, was that before or after Ms. Fonzone called
[18] 911 and asked for help from the police?
[19] **A.** It might have been after. I wasn't there when she
[20] called 911.
[21] **Q.** Do you remember about what time you gave your
[22] statement to the detective?
[23] **A.** The report was made up at 6:13 around that time.
[24] **Q.** If the radio call says 6:16 from the Philadelphia
[25] police, it's probably around the same time she's calling for

Page 35

[1] rope. It's not like a gate that you open and close. It's
[2] just a rope that goes over it so it's easier to go over it.
[3] As we were in discussion, she started to walk down the seats.
[4] **Q.** At some point on direct, and I wrote it down, you
[5] said she ignored us and started walking.
[6] **A.** Yes; she was watching the game inside the handicap
[7] section at first.
[8] **Q.** But ignoring you guys?
[9] **A.** Yes, she wasn't paying any mind to us.
[10] **Q.** She was not being unruly? She was watching the
[11] game?
[12] **A.** Yes.
[13] **Q.** And it wasn't until you and your supervisor come
[14] back to her and said, You can't stay here. You have to go
[15] somewhere else?
[16] **A.** Yes.
[17] **Q.** And when you told her, You can't stay here and you
[18] have to go somewhere else, which one of you put your hands on
[19] her to do a come-along?
[20] **A.** She --
[21] **Q.** Let me finish my question.
[22] Do you understand what a come-along is?
[23] **A.** Yes.
[24] **Q.** Hands on elbows to guide folks?
[25] **A.** Yes.

Page 34

[1] help and you're giving your statement to the detective; is
[2] that fair?
[3] **A.** Yes; when they ask us for a time, we give an
[4] estimated time. We're not actually looking at a clock.
[5] **Q.** You said she was told fives or whatever to sit
[6] down?
[7] **A.** Yes.
[8] **Q.** It wasn't by you?
[9] **A.** No, it was by the hostess.
[10] **Q.** When you moved her initially from where she was up
[11] top --
[12] **A.** Yes.
[13] **Q.** -- at some point you left her alone and you said she
[14] ignored you -- strike that.
[15] What I recall you saying is that she ignored you
[16] guys and started watching the game, right?
[17] **A.** No, the handicap section is gated off. Once a
[18] person goes in there, they have to come out and go around.
[19] We were in a discussion on how to make Ms. Fonzone be able to
[20] watch the game because we really didn't want to throw her out
[21] of the game. We didn't want to eject her out of the game.
[22] We tried everything in our means to keep her in the stadium.
[23] She refused to listen to us at all times.
[24] When me and my supervisor were discussing where we
[25] could put her at, she got out of the gate. It has like a

Page 36

[1] **Q.** Which one of you put your hands on this lady and did
[2] a come-along as you're trying to explain to her what's going
[3] on?
[4] **A.** Well, it didn't happen that way. At first she tried
[5] to go down to her seat. The sergeant tapped her on her
[6] shoulder. That's when she swung at the officer with her
[7] hands, like you're pushing somebody's arm off of you because
[8] you don't want nobody to touch you.
[9] At that time that's when the officers grabbed her by
[10] the shoulder and told her that she was going to have to go
[11] down to the police room at that time.
[12] **Q.** But before all of this --
[13] **A.** She was --
[14] **Q.** Let me finish my question. At some period of time
[15] once you moved her from Section 107 or 108 she was calm and
[16] watching the game, but ignoring you and your supervisor,
[17] right?
[18] **A.** Yes.
[19] **Q.** At some point later, you say she stepped out of the
[20] fence to go back to her seat; is that what you're saying?
[21] **A.** Yes; after we told her that she was not able to go
[22] back down to her seat anymore, that's when she said, "No, I'm
[23] going back down to my seat right now."
[24] **Q.** Okay. When she told you, "I'm going back down to my
[25] seat right now," is that's when you're saying the come-along

[1] happened?

[2] **MS. KOTCHIAN:** Objection. He testified that
[3] a come-along did not happen.

[4] **THE COURT:** Sustained. You can't keep using
[5] the term come-along if he didn't say it occurred.

[6] **MS. RAINEY:** He also agrees that he knows what
[7] a come-along is and this is cross-examination.

[8] **THE COURT:** He also knows what a cow is and
[9] neither one has anything to do with what he has
[10] testified to.

[11] **MS. RAINEY:** A cow doesn't have anything to do
[12] with security, Judge. It's really important because --

[13] **THE COURT:** He testified as to what occurred.
[14] If you don't want to accept his testimony, that's fine.
[15] He indicated that she was walking down and the sergeant
[16] tapped her on the shoulder and that's when what he
[17] described as her swinging her arms occurred.

[18] **MS. RAINEY:** But he also made that comment
[19] after he agreed with me that he knows what a come-along
[20] is and that it happened. It's cross-examination.

[21] **MS. KOTCHIAN:** That's not the testimony.

[22] **THE COURT:** That's okay.

[23] **BY MS. RAINEY:**

[24] **Q.** Anyway, when you say she left the handicap area and
[25] told you she's going back her seat, right?

[1] **THE COURT:** If you want to characterize what
[2] he did, feel free to do it.

[3] **MS. KOTCHIAN:** When he said she was swinging
[4] at us when the police touched her, he indicated that
[5] with his hands crossed and then quickly flailing both of
[6] his arms out to his sides.

[7] **THE COURT:** Do you agree with that
[8] characterization as to what the witness did?

[9] **MS. RAINEY:** I trust her. I wasn't looking.
[10] I was reading. No objection.

[11] **THE COURT:** All right.

[12] **BY MS. RAINEY:**

[13] **Q.** When you said she moved her arms in that way,
[14] though, that was in an attempt to keep others from grabbing
[15] ahold of her arms, right?

[16] **A.** (No response)

[17] **Q.** In other words, what I'm asking is that she didn't
[18] haul out and purposely hit someone that was standing in front
[19] of her; is that a fair statement?

[20] **A.** That's fair.

[21] **Q.** The folks that you said she swung at were on the
[22] side of her or behind her and she moved her arms in such a
[23] way to keep them from grabbing her arms; is that also fair?

[24] **A.** Yes, in a way.

[25] **Q.** You took her back to the cell room -- let's pretend

[1] **A.** Yes.

[2] **Q.** She wasn't screaming or hollering, she was trying to
[3] go back to her seat; is that a fair assessment?

[4] **A.** When she tried to go back down to her seat again,
[5] she was screaming and swinging and all.

[6] **Q.** Swinging at who?

[7] **A.** At us. Like, I'm going down to my seat and that's
[8] it. And that's when the officer tapped her on her shoulder
[9] and said, "You can't go down to your seat." She started
[10] swinging her arms and hit the officer. That's when the
[11] sergeant came over and said, "That's it. You're going to the
[12] police room." He grabbed her by the one shoulder. Officer
[13] Ortiz grabbed her by the other shoulder. She started
[14] swinging at them with her elbows backwards and that's when
[15] Sergeant B got his handcuffs and handcuffed her and they
[16] grabbed her arm by arm and brought her down to the police
[17] room.

[18] **MS. KOTCHIAN:** And when he first talked about
[19] swinging --

[20] **MS. RAINEY:** Are you objecting or are you
[21] testifying?

[22] **THE COURT:** She's characterizing.

[23] **MS. KOTCHIAN:** I'm placing a description on
[24] the record for what I saw the witness do and you can
[25] correct me if I'm wrong.

[1] right now that you're in the handicap area where you and your
[2] compadres are moving her towards the cell room, how far would
[3] you have to go? Point to something in the room from where
[4] you're sitting.

[5] **A.** It would be about a block.

[6] **Q.** So it's beyond that door and out to the hall?

[7] **A.** Yes.

[8] **Q.** While she's being taken to the cell room, is there
[9] one person on one side of her and another person on the other
[10] side of her sort of pulling her arms to guide her where you
[11] want her to go?

[12] **A.** Yes.

[13] **Q.** And at that point and anytime before you get to the
[14] cell room, do you see her pull out her cell phone and make a
[15] phone call?

[16] **A.** No.

[17] **Q.** You are aware at some point that night, though, she
[18] did call the Philadelphia police, 911, asking for help; are
[19] you aware of that?

[20] **A.** I was aware of it at the end; therefore, I talked to
[21] my supervisor who was down in the police room and said that
[22] she made a phone call to 911 when she was inside the cell.

[23] **THE COURT:** Inside the cell?

[24] **THE WITNESS:** Inside the cell. We have a cell
[25] that's in the police room.

[1] **THE COURT:** Okay. Fine.
[2] **BY MS. RAINEY:**
[3] **Q.** And at any point when you first encountered my
[4] client to when she's ultimately in the cell room, who punches
[5] her in the face?
[6] **A.** Nobody.
[7] **Q.** How did she get bruised up on her face then, sir?
[8] **A.** I can't tell you that --
[9] **MS. KOTCHIAN:** I'm going to object. We have
[10] no evidence that she had any kind of bruises on her
[11] face.
[12] **MS. RAINEY:** I would like to have this marked
[13] as Defense Exhibit-2.
[14] **THE COURT:** I'm going to overrule the
[15] objection subject to whatever counsel is going to show
[16] the witness.
[17] - - -
[18] (Photograph Exhibit D-2 marked for identification.)
[19] - - -
[20] **MS. RAINEY:** I don't know if counsel wants to
[21] stip or not. Would you stip that this is the arrest
[22] photo of her that day?
[23] **MS. KOTCHIAN:** I think it was taken the day --
[24] **MS. RAINEY:** Close in time to her arrest; is
[25] that fair?

[1] **Q.** Is your division unit of Phillies organization
[2] responsible for not just securing the stadium, but also
[3] looking at the cameras, or no?
[4] **A.** Not us. That's the full time staff.
[5] **Q.** Did you or the Police Department or anyone as far as
[6] you know go and inquire from the full time security if a
[7] video camera existed to demonstrate or depict any part of
[8] what happened on October 6th involving this lady?
[9] **A.** If it was like a fight that was involved or an
[10] assault or a fight or anything like that, there would have
[11] been a camera that would have been based on that situation,
[12] but considering that it was just a minor incident at the
[13] time, there would have been no cameras because there's more
[14] than one incident going on at the ballpark at one time and
[15] they only have two main cameras and they're usually zoomed in
[16] for specific incidents.
[17] **Q.** So if it was so minor, why did she have to go to the
[18] cell room?
[19] **A.** Well, first of all, after she took the swing at the
[20] officer -- plus she wouldn't listen to us and she wouldn't
[21] comprehend on us moving her to another section.
[22] We have a conduct that is stated before the game
[23] starts by a speaker at the stadium telling you how to act,
[24] what you can do, what you cannot do.
[25] The hostess also will explain to the person, if

[1] **MS. KOTCHIAN:** If I can just find the exact
[2] time.
[3] **BY MS. RAINEY:**
[4] **Q.** While she's looking for that, there is no picture
[5] taking system or machine in the cell room stadium, right?
[6] **A.** There was a camera -- well, we have a main security.
[7] **Q.** I'm sorry. What?
[8] **A.** There's Phillies security and then there is the full
[9] time staff security there. They have cameras that go to the
[10] main parking lot and around the whole stadium.
[11] **Q.** Are those recording?
[12] **A.** Yes.
[13] **Q.** And those cameras -- are those cameras conspicuously
[14] located in the various fan sections of that stadium?
[15] **MS. KOTCHIAN:** Objection to relevance. Are
[16] there cameras in the Phillies stadium?
[17] **THE COURT:** She specified where. She said in
[18] the fan section of the stadium.
[19] Overruled.
[20] **THE WITNESS:** Yes.
[21] **BY MS. RAINEY:**
[22] **Q.** So what happened on October 6, 2010 should have been
[23] recorded, right?
[24] **A.** Well, the cameras don't stay in one area. They
[25] constantly, like run.

[1] there is a problem, that she or he cannot do certain things.
[2] If the person continues to act in that way, we are called to
[3] the scene.
[4] Once we go down -- it's not all the time that the
[5] person would get ejected. Most of the time we go down and we
[6] have a normal conversation with that person. Either they
[7] listen to us, or they don't. If they listen to us, we keep
[8] them in their seats. Most of the time, everything is fine
[9] **Q.** After you guys got Ms. Fonzone to the handicap place
[10] and you continued your interaction with her and you
[11] ultimately get her in the cell, you and your comrades who
[12] were with you were transporting her to the cell, right?
[13] **A.** Yes.
[14] **Q.** Fans were busy watching games and no one actually
[15] had anything to do with that sort of convoy to the security
[16] office; is that fair?
[17] **A.** There was the two officers, me, my supervisor, and
[18] our main director.
[19] **Q.** But the focus was on Ms. Fonzone; is that a fair
[20] statement?
[21] **A.** Than the other fans?
[22] **Q.** Yes.
[23] **A.** At that time, yes.
[24] **Q.** Obviously, you participated in the convoy of taking
[25] her to the cell room?

[1] **A.** Yes.
[2] **Q.** Once you did that, you left to do your thing and
[3] write your report?
[4] **A.** My report was written right there.
[5] **Q.** So you could see her the whole time?
[6] **A.** Yes, she was sitting in the chair like mine. We
[7] have two desk in there. The detective is on the right side
[8] and the sergeant that's on duty is at this desk. He gets the
[9] information from the person that we bring down and the
[10] detective would then get my statement.
[11] **Q.** Could you visually see where she was when you were
[12] in there?
[13] **A.** Yeah, I was sitting right here and she would be
[14] sitting right here, maybe four feet from me.
[15] **MS. RAINEY:** For the record, the witness used
[16] his left hand to point to juror chair marked number
[17] seven to intimate or suggest where Ms. Fonzone would
[18] have been sitting. He used his right hand to
[19] demonstrate a space less than ten feet away where he
[20] would have been sitting; fair to say?
[21] **THE WITNESS:** No, she would have been sitting
[22] here.
[23] **MS. RAINEY:** Sorry about that.
[24] **THE WITNESS:** The desk is about maybe four
[25] feet. It's not like a big room.

[1] **A.** There is --
[2] **Q.** A full glass?
[3] **A.** Yeah, it's like about maybe one foot by one foot
[4] glass window.
[5] **Q.** So that's the only part of her that you could see
[6] when she's in the cell room?
[7] **A.** Yes.
[8] **Q.** How big is that cell room? Is it like a regular
[9] cell?
[10] **A.** I've never been in a cell room.
[11] **Q.** Fair enough.
[12] How long do you think your interaction with
[13] Ms. Fonzone lasted from when you first talked to the hostess
[14] and go down to her section all the way to the cell room?
[15] How long do you think that took, 15 minutes maybe?
[16] **A.** No, it was a lot longer than that. From the time
[17] that I went down to get her up took about 10 to 15 minutes.
[18] We talked up top I would say maybe about the same amount of
[19] time. It might have been a half an hour that passed by by
[20] the time we actually confronted her at her seat to the time
[21] she got down to the cell.
[22] **Q.** What time? Half an hour so far?
[23] **A.** Maybe a half an hour.
[24] **Q.** Doesn't your statement to the detective say 6:15?
[25] **A.** No, it was -- the time that we give is an

[1] **BY MS. RAINEY:**
[2] **Q.** So you could see her during the time she's sitting
[3] there, yes?
[4] **A.** Yes.
[5] **Q.** And you didn't see her pull out her phone and call
[6] the police?
[7] **A.** No; I was told after she did it inside the cell.
[8] **Q.** Okay. Who else was in the cell with you and
[9] Ms. Fonzone?
[10] **A.** She was the only person in the cell.
[11] **THE COURT:** Inside the cell or cell room?
[12] **MS. RAINEY:** Good question.
[13] **BY MS. RAINEY:**
[14] **Q.** Is there a distinction between the cell and the cell
[15] room?
[16] **A.** I guess it's the only way to interpret it. It's
[17] just a room that has a door in it that they would put someone
[18] in if they're erratic.
[19] **Q.** Would someone sit in that actual room with the
[20] person or just close outside?
[21] **A.** No, just the person that's -- they're put in there
[22] by themselves.
[23] **Q.** Is it a glass or what kind of door?
[24] **A.** A stone wall and it has a metal door on it.
[25] **Q.** Can you see through it?

[1] approximate time that we -- it's either from the time that we
[2] are down there that it first happened or the time that we
[3] write up the report.
[4] **Q.** In your statement, didn't you say a large crowd
[5] begins to gather. Weren't they busy watching the game?
[6] **A.** We're talking about forty five thousand people
[7] there. Some people are watching the game. Some people are
[8] there because it's the playoffs. There are people that are
[9] there for the first time. They're walking around eating.
[10] Where Section 107 is, it's in the concourse where there is a
[11] lot of food. There's people drinking.
[12] And there's standing room. So with the standing
[13] room alone, they sell about ten thousand tickets for the
[14] standing room. So around the whole stadium, if you don't
[15] have a seat, you're allowed to stand at the back of the
[16] section, which I would say, if there's seats right where I'm
[17] pointing at here, you could stand right behind that person.
[18] **Q.** Is that closer to those seats in 108 where she was
[19] or farther away?
[20] **A.** That could be right at the top were the handicap
[21] section was at.
[22] **Q.** How many rows behind her would that have been?
[23] **A.** There's no rows. It's just an area I would say from
[24] that wall there to this wall here. It's like the walking
[25] area and that's packed with fan stands.

[1] **MS. RAINEY:** Your Honor, I'm going to ask that
[2] this document be shown to the witness for identification
[3] only at this point as Defense Exhibit-2. It's just a
[4] magazine cover.

[5] **THE COURT:** A magazine cover.

[6] **MS. RAINEY:** That's all it is?

[7] **MS. KOTCHIAN:** I don't know what this witness
[8] has to do with it, but I would stipulate that this is a
[9] cover of a magazine that --

[10] **MS. RAINEY:** I want to know if he's going to
[11] recognize that this is what I'm going to say it is.
[12] That's it.

[13] **MS. KOTCHIAN:** I would stipulate that it's a
[14] photograph of the last pitch of Roy Halladay's no hitter
[15] on the date of October 6th of 2012.

[16] **MS. RAINEY:** And that the individuals are seen
[17] in this picture standing.

[18] **MS. KOTCHIAN:** During the last pitch of a no
[19] hitter, I agree that people are standing.

[20] **THE COURT:** Have you ever been to Citizens
[21] Bank Park?

[22] **MS. RAINEY:** Yes.

[23] **THE COURT:** Don't you know that there's
[24] various times when fans stand and cheer and during the
[25] baseball game most of it is like watching paint dry and

[1] **BY MS. RAINEY:**

[2] **Q.** Roy Holladay is on offense -- he's pitching?

[3] **THE COURT:** Defense. If you use those terms
[4] in baseball --

[5] **MS. RAINEY:** I was trying to correct myself,
[6] Your Honor.

[7] **BY MS. RAINEY:**

[8] **Q.** It's defense not offense, right?

[9] **A.** Yes.

[10] **Q.** And people are standing; you agree with that?

[11] **A.** Yes.

[12] **MS. RAINEY:** If I could have this document
[13] marked as Defense Exhibit-3?

[14] **MS. KOTCHIAN:** Objection. It's a Philadelphia
[15] Police Department photo that this witness didn't take.

[16] **THE COURT:** That what?

[17] **MS. KOTCHIAN:** It's a Philadelphia Police
[18] Department photo that looks like it was taken between
[19] 3:46 a.m. and 4:14 a.m. on October 7th of 2010.

[20] **THE COURT:** What is the time again?

[21] **MS. KOTCHIAN:** Between 3:46 a.m. and 4:14 a.m.
[22] on October 7, 2010 at the PDU at 750 Race Street.

[23] **MS. RAINEY:** I would lay a better foundation,
[24] Your Honor. She's right.

[25] **THE COURT:** Okay.

[1] you sit down?

[2] **MS. RAINEY:** I know that, but I also
[3] know that some people when they pay for their tickets --

[4] **THE COURT:** Show him D-2.

[5] **MS. RAINEY:** May I approach the witness?

[6] **THE COURT:** Yes.

[7] **BY MS. RAINEY:**

[8] **Q.** Could you tell what that depicts there, if you know?

[9] **A.** Well, personally I wouldn't know because I missed
[10] this whole game by being downstairs in the police room.

[11] **Q.** Would you recognize Citizens Bank Park if you saw it
[12] on a magazine cover?

[13] **A.** Well, by this picture, I could see it's a baseball
[14] game. I can't really say it's Citizens Bank Park because
[15] there's nothing that actually says it's our park. I know he
[16] pitched that game.

[17] **MS. KOTCHIAN:** Your Honor, there is a
[18] stipulation that that's Roy Holladay throwing a pitch
[19] and there's a caption that says Roy Holladay throws the
[20] last strike of his no hitter in the playoffs on October
[21] 6, 2010.

[22] **THE COURT:** I would take judicial notice that
[23] that game occurred at Citizens Bank Park.

[24] **MS. RAINEY:** All I wanted him to say is that
[25] people are standing in that picture.

[1] **BY MS. RAINEY:**

[2] **Q.** When you first encountered Ms. Fonzone when you go
[3] down to her section, you don't recall any specific bruises on
[4] her face or her neck or anything, do you sir?

[5] **A.** No.

[6] **Q.** Do you recall what she was wearing?

[7] **A.** No, I couldn't even tell you that.

[8] **Q.** She wasn't wearing a suit, right?

[9] **A.** Yes.

[10] **Q.** She was probably wearing red for Phillies; is that
[11] fair? If you don't know, it's cool.

[12] **A.** I can't remember.

[13] **Q.** And you already told us neither you nor anyone that
[14] you saw struck her on her face in any way, right?

[15] **A.** No.

[16] **Q.** So there's no reason why she would have bruises on
[17] her face, fair?

[18] **A.** Fair.

[19] **MS. RAINEY:** Your Honor, if I could have this
[20] shown to the witness now for identification? It's D-3.

[21] - - -

[22] (Photograph Exhibit D-3 marked for identification.)

[23] - - -

[24] **MS. KOTCHIAN:** Objection, Your Honor. There
[25] is no bruises on her face in the photograph. I don't

[1] know what's the point of the photograph.
[2] **THE COURT:** I guess it's in the nature of an
[3] offer of proof. What's the purpose of showing that
[4] photograph?
[5] **MS. RAINEY:** If the Court would look at this
[6] and the Commonwealth there is a bruise over her left eye
[7] and there is bruises visible on her chest. I showed
[8] that to counsel before we even proceeded to let her know
[9] that that's what I was going to be doing with this.
[10] **THE COURT:** So you want this witness to say
[11] that in this photograph that he does not know when it
[12] was taken, it was not taken at Citizens Bank Park, that
[13] there's a picture of what appears to be the defendant
[14] with a bruise on her face?
[15] **MS. RAINEY:** Yup.
[16] **MS. KOTCHIAN:** She can move that into evidence
[17] and she can argue --
[18] **MS. RAINEY:** Fair enough. As the Court knows,
[19] I asked him if anyone hit her and he said, "No."
[20] **THE COURT:** Exactly.
[21] Now, there's a way to get it through this
[22] witness if you want to say, Is this what she appeared to
[23] look like when you first went down to confront her?
[24] **MS. RAINEY:** I asked him that. I asked him if
[25] she had any bruises on her when he went to confront her

[1] **Q.** Frustrated?
[2] **MS. KOTCHIAN:** Objection as to the
[3] characterization.
[4] **THE COURT:** I mean, it's your
[5] characterization. He indicated she was acting the same
[6] way. It's your characterization that she was
[7] frustrated.
[8] **BY MS. RAINEY:**
[9] **Q.** The voice that she used was exactly the same as
[10] today?
[11] **A.** It was louder, softer. It was like mixed.
[12] **Q.** And you said that a voice or someone yells out the
[13] protocols for how fans are supposed to act in the ballpark,
[14] right?
[15] **A.** It's not a voice.
[16] **Q.** You said over the loud speakers. Did I mishear
[17] you?
[18] **A.** We have radios.
[19] **THE COURT:** That's not her question.
[20] **BY MS. RAINEY:**
[21] **Q.** My question is, you said already that someone's
[22] voice over the loud speaker announces how you're supposed to
[23] behave in the ballpark?
[24] **A.** Yes.
[25] **Q.** That's all I'm asking.

[1] and he said, "No." That's why I tried to do it this
[2] way, but thank you.
[3] **BY MS. RAINEY:**
[4] **Q.** So listen, did you ever see any officers strike Ms.
[5] Fonzone with a stick or anything else?
[6] **A.** No.
[7] **Q.** Did you strike her?
[8] **A.** No.
[9] **Q.** At no time during the convoy from the handicap area
[10] to the cell room were you joined by a crowd of fans following
[11] you; is that fair?
[12] **A.** Fair.
[13] **Q.** You said something on direct that I want to make
[14] sure I address. You said that Ms. Fonzone was acting the
[15] same way that day as she did here in court today, right?
[16] **A.** Yes.
[17] **Q.** You heard the frustration in her voice today, right?
[18] **A.** Yes.
[19] **Q.** Against her counsel, right?
[20] **A.** Yes.
[21] **Q.** So it was the frustration that you heard in her
[22] voice back then; is that also fair?
[23] **A.** It was loud like that, but it was different.
[24] **Q.** You said the same as today, right?
[25] **A.** Yes, the way she was acting.

[1] **A.** Okay. Yes.
[2] **Q.** You don't know if she was present to hear that? You
[3] couldn't tell the Court she was present to hear that, can
[4] you?
[5] **A.** No.
[6] **Q.** You don't know what time she arrived before this
[7] game, can you?
[8] **A.** No.
[9] **Q.** This was a 4:00 o'clock game, fair?
[10] **A.** Fair.
[11] **Q.** By the time that this happened it was between 5:30
[12] and almost 6:00, fair?
[13] **A.** Yes.
[14] **Q.** You don't know where she was before that, fair?
[15] **A.** Fair.
[16] **Q.** You don't know how many games prior to that game she
[17] had come to at that stadium, do you?
[18] **A.** No.
[19] **MS. RAINEY:** Thank you. I have no further
[20] questions.
[21] **THE COURT:** Any redirect?
[22] **MS. KOTCHIAN:** Yes.
[23]
[24]
[25]

[1] - - -
[2] REDIRECT EXAMINATION
[3] - - -
[4] **BY MS. KOTCHIAN:**
[5] **Q.** When you say guest conduct, that's things like don't
[6] go out on the field, right?
[7] **A.** Don't go on the field, stand up, as Ms. Fonzone was,
[8] no swinging, smoking in your seats.
[9] **THE COURT:** All those things that were
[10] prohibited?
[11] **THE WITNESS:** Right. And it's on the website.
[12] If anyone goes on the website, it has conduct and what
[13] you can do or can't bring into the stadium, like
[14] alcohol. At that time you weren't allowed to bring cans
[15] into the stadium. If you were caught with a can, you
[16] were ejected. If you brought glass in, you were
[17] ejected.
[18] You're not allowed to smoke in the seating
[19] area. You'll get a warning. Our conduct is that you
[20] get one warning. After that one warning, we have the
[21] right to eject you out of the stadium.
[22] The security is like the law in the ballpark.
[23] We determine if you stay or if you go. She was told
[24] numerous times how to conduct herself in a mannerly way
[25] if she wanted to stay in the ballpark. She refused. I

[1] **MS. KOTCHIAN:** It was objected to on direct
[2] and it was elicited on cross and I certainly didn't
[3] object. It's a part of the record.
[4] **THE COURT:** I'm not going to strike it, but I
[5] am going to sustain the objection.
[6] **THE WITNESS:** I understand.
[7] **THE COURT:** You can't tell us what other
[8] people said.
[9] **THE WITNESS:** I'm sorry.
[10] **THE COURT:** I know. Don't worry about it.
[11] **MS. KOTCHIAN:** I don't have any other
[12] questions for the witness, Your Honor.
[13] **THE COURT:** So we are now on recross?
[14] **MS. RAINEY:** Just based solely on what she
[15] just said and that long visitation that he just stated.
[16] **THE COURT:** Okay.
[17] **BY MS. RAINEY:**
[18] **Q.** You don't know if she went to your website to look
[19] at your rules and conducts, do you?
[20] **MS. KOTCHIAN:** Objection.
[21] **MS. RAINEY:** He just testified about --
[22] **MS. KOTCHIAN:** It's called speculation.
[23] **THE COURT:** Overruled.
[24] **BY MS. RAINEY:**
[25] **Q.** You don't know that, do you?

[1] was called in. I went in to confront her.
[2] **MS. RAINEY:** Your Honor, I'm going to object
[3] to everything he said before "I was called in" because
[4] it's hearsay. Obviously, he wasn't there when it was
[5] said. He's telling us what someone else said.
[6] **THE COURT:** Wasn't there for what?
[7] **MS. RAINEY:** He said just now before he said,
[8] "I was called in," she was told numerous times how to
[9] conduct herself. By whom? Who told him that? He
[10] doesn't know because his next statement was, "I was
[11] called in." I'm moving to strike that part.
[12] **THE COURT:** All right. The part about what
[13] the announcements were, obviously that was in response
[14] to both of your questions, so that part you're not
[15] objecting to, right?
[16] **MS. RAINEY:** No.
[17] **THE COURT:** The part when he said she was told
[18] numerous times, I believe that's already been testified
[19] to.
[20] **MS. RAINEY:** And I objected then and you
[21] sustained it because he told us the hostess said someone
[22] else said it. He can't keep saying it. You already
[23] ruled on it. I'm asking that you make sure he knows
[24] that he can't keep bringing in stuff that's not -- I'm
[25] moving to strike that same thing.

[1] **A.** No, I don't.
[2] **Q.** You didn't see anyone hand her anything with a code
[3] of conduct, did you?
[4] **A.** No.
[5] **MS. RAINEY:** Thank you.
[6] **BY MS. KOTCHIAN:**
[7] **Q.** Isn't that on the ticket?
[8] **A.** Yes. It might be printed on the ticket, but there
[9] are conduct cards that we have and the hostess has and that
[10] if there is a problem, they usually hand it to him. I don't
[11] know if the hostess a that time handed her one or if she
[12] received one. I don't have it. I can't say because the
[13] person is not here.
[14] **THE COURT:** Sir, you don't know if she got the
[15] code of conduct, right?
[16] **THE WITNESS:** Yes.
[17] **THE COURT:** Does that obviate your objection?
[18] **MS. RAINEY:** Yeah, sort of.
[19] **MS. KOTCHIAN:** I don't have any further
[20] questions, Your Honor. I would move for admission of
[21] D-1 as a prior consistent statement.
[22] **MS. RAINEY:** Prior what?
[23] **MS. KOTCHIAN:** Consistent statement.
[24] **MS. RAINEY:** Okay.
[25] **MS. KOTCHIAN:** The Commonwealth rest.

Page 61

[1] **THE COURT:** D-one?
[2] **MS. KOTCHIAN:** Yes, Your Honor. It's the
[3] statement from October 6th.
[4] **THE COURT:** Any objection with D-1 being
[5] admitted?
[6] **MS. RAINEY:** No.
[7] **THE COURT:** D-1 being admitted without
[8] objection.
[9] **MS. RAINEY:** D-1 or C-1?
[10] **THE COURT:** She said D-1.
[11] **MS. KOTCHIAN:** D-1.
[12] **MS. RAINEY:** That was mine.
[13] **MS. KOTCHIAN:** Yes.
[14] **MS. RAINEY:** Thank you.
[15] No further questions for Mr. Oteri.
[16] **THE COURT:** Step down, sir.
[17] - - -
[18] (Witness excused.)
[19] - - -
[20] **MS. RAINEY:** Can I have a minute, Judge? I'm
[21] a little bit confused.
[22] **THE COURT:** Yes.
[23] - - -
[24] (Pause.)
[25] - - -

Page 63

[1] DEFENDANT'S EVIDENCE
[2] - - -
[3] DIRECT EXAMINATION
[4] - - -
[5] **BY MS. RAINEY:**
[6] **Q.** Really quickly, Detective, do you remember a job
[7] that you were assigned on from October 2010 at the Phillies
[8] game?
[9] **A.** Yes, I do recall that incident.
[10] **Q.** Do you remember writing statements or anything?
[11] **A.** I did type statements.
[12] **Q.** And did you type statements from any particular
[13] security officer at Citizens Bank Park?
[14] **A.** Mr. Oteri.
[15] **Q.** And was that a face-to-face interview you conducted
[16] with him?
[17] **A.** Face-to-face.
[18] **Q.** Did you use your computer in any way to type word
[19] for word what he was saying?
[20] **A.** Yes.
[21] **Q.** Did you ask questions and he gives answers, or did
[22] you do a narrative of what happened?
[23] **A.** A narrative.
[24] **Q.** If you can look at what's been marked as Defendant
[25] Exhibit-1. It's a narrative of some sort.

Page 62

[1] **MS. KOTCHIAN:** Your Honor, I am scheduled to
[2] teach a training course at my office at 3:30.
[3] **MS. RAINEY:** I won't be long. I promise.
[4] **THE COURT:** You want to bifurcate this matter?
[5] **THE DEFENDANT:** No. Lord no.
[6] **MS. KOTCHIAN:** If there is additional
[7] witnesses being called, then yes.
[8] **MS. RAINEY:** We can work this out through a
[9] stip.
[10] **MS. KOTCHIAN:** I doubt there can been a
[11] stipulation.
[12] **MS. RAINEY:** Then, Your Honor, I'll call
[13] Detective Landis.
[14] **MS. KOTCHIAN:** Your Honor, I do need to leave
[15] her in ten minutes.
[16] **MS. RAINEY:** That's no problem. I just have
[17] one question for him.
[18] **THE CRIER:** Please state your first and last
[19] name for the record.
[20] **THE WITNESS:** Detective John Landis, Badge
[21] Number 8115, currently assigned to South Detectives.
[22] - - -
[23] DETECTIVE JOHN LANDIS, having been duly sworn,
[24] was examined and testified as follows:
[25] - - -

Page 64

[1] **A.** It's not marked, but it appears to be a copy of the
[2] statement.
[3] **Q.** Does that look to be a true and accurate copy of the
[4] statement?
[5] **A.** Yes.
[6] **Q.** Were you told by Mr. Oteri that he did an
[7] independent Citizens Bank security report?
[8] **A.** I do recall. I do know that they do their own
[9] reports.
[10] **Q.** Did you seek that report out in any way?
[11] **A.** No, I did not.
[12] **Q.** Did you seek out videos of the incident in any
[13] way?
[14] **A.** From what I understand, there wasn't any video
[15] available.
[16] **Q.** What do you mean?
[17] **A.** At that section there wasn't any video available.
[18] **Q.** And you don't know who told you that?
[19] **A.** That's based on my knowledge of the stadium.
[20] **Q.** You didn't ask anybody? Were you present at the
[21] roundhouse when my client was arrested and photographed?
[22] **MS. KOTCHIAN:** I'm going to object to the term
[23] "arrested." I think she was arrested at Citizens Bank
[24] Park.
[25] **THE COURT:** Okay.

Page 65

[1] **BY MS. RAINEY:**

[2] **Q.** Were you around when she was photographed and booked
[3] at the roundhouse?

[4] **A.** I was not.

[5] **Q.** Did you see Ms. Fonzone on that date at the Citizens
[6] Bank Park?

[7] **A.** I did.

[8] **Q.** Were you aware that she called the police and made a
[9] call for help?

[10] **A.** I was.

[11] **Q.** What did you do when you found that information out,
[12] if anything?

[13] **A.** Ms. Fonzone was brought down to the police room
[14] inside Citizens Bank Park. She was irate. She was flailing
[15] her arms, kicking. She was asked to sit down numerous times
[16] inside the police room. She refused. She had snot coming
[17] down from her nose, which one of the sergeants wiped off her
[18] face. Again she was asked to calm down. She continued to
[19] act in an irate state and she was placed into one of the
[20] holding cells inside the police room.

[21] **Q.** And you saw all this, didn't you?

[22] **A.** Yes.

[23] **Q.** Where did you mark that down at?

[24] **A.** I didn't mark that down anywhere.

[25] **Q.** You've done how many cases since this date?

Page 67

[1] security officers came down along with Mr. Oteri.

[2] **Q.** And you saw the convey from the stadium actually
[3] into the cell room where you saw Ms. Fonzone?

[4] **A.** When she was brought in.

[5] **Q.** So you didn't see her during that --

[6] **A.** No.

[7] **Q.** So anything that's related to that on your police
[8] report, some other officer told you that, fair enough?

[9] **A.** Say that again.

[10] **Q.** Let me just stop playing.

[11] **MS. RAINEY:** Let me mark the PARS as D-4. May
[12] I approach?

[13] **THE COURT:** Yes.

[14] - - -

[15] (PARS report Exhibit D-4 marked for identification)

[16] - - -

[17] **BY MS. RAINEY:**

[18] **Q.** Did you do a 49 in this case?

[19] **A.** I might have.

[20] **Q.** Do you recognize that?

[21] **A.** Yeah, this is basically our police arrest report.

[22] This is word for word the statements that were taken from
[23] Mr. Oteri and Officer Ortiz.

[24] **Q.** Fair enough. There wouldn't be any separate 483s or
[25] anything like that?

Page 66

[1] **A.** A lot of cases, but this case rings out in my mind.

[2] **Q.** Who or what did you consult in prior to coming to
[3] court to testify today?

[4] **A.** Other than the ADA, no one.

[5] **Q.** Where did you -- do you recall anyplace where it was
[6] written that she was snorting and all of that stuff? Where
[7] was that written at?

[8] **A.** It's based on my recollection.

[9] **Q.** Your recollection from back then?

[10] **A.** Yes.

[11] **Q.** Don't you think that being the assigned, it would
[12] have been important to write in your report that she was
[13] irate and doing all the things you just calmed she was
[14] doing?

[15] **A.** I don't have to review my arrest report based on
[16] what I said. I believe I wrote in there that she was irate.

[17] **Q.** Did you interview Officer Ortiz?

[18] **A.** I did.

[19] **Q.** Any other Officers involved as far as you know?

[20] **A.** Sergeant B was on the case and there was other
[21] officers inside the police room.

[22] **Q.** What about other security guards from Citizens Bank
[23] Park for the Phillies?

[24] **A.** Other than Mr. Oteri, who was a direct witness --
[25] based on what had happened from what I was told, other

Page 68

[1] **A.** No.

[2] **Q.** No police memos or nothing?

[3] **A.** No.

[4] **Q.** Detective, thank you so much.

[5] **MS. RAINEY:** No further questions.

[6] **THE COURT:** Cross-examine?

[7] - - -

[8] **CROSS-EXAMINATION**

[9] - - -

[10] **BY MS. KOTCHIAN:**

[11] **Q.** Detective, you gave a statement to Sergeant John
[12] Evans on January 19th of 2011 about this case, right?

[13] **A.** I did.

[14] **MS. RAINEY:** I'm sorry. Who?

[15] **MS. KOTCHIAN:** It was passed directly to your
[16] client on December 28th of 2012.

[17] **MS. RAINEY:** I'm going to object to the use of
[18] that. Presumably counsel provided everything in his
[19] file that he had. I don't have that. I don't know if
[20] it was passed or not. The day of court three years
[21] later -- I'm objecting.

[22] **MS. KOTCHIAN:** Your Honor, it was passed by me
[23] and by certified mail on December 21st of 2012 to
[24] Ms. Fonzone at her address of record. At that time she
[25] was unrepresented.

[1] **THE COURT:** Do you have the letter?
[2] **MS. KOTCHIAN:** Yes.
[3] **THE COURT:** Can I see the letter?
[4] **MS. KOTCHIAN:** Yes.
[5] **MS. RAINEY:** Judge, I would ask for a proof of
[6] return receipt or some certified mail receipt. A letter
[7] doesn't signify it. Where is the receipt? Aside from
[8] that, counsel has been on this case for how long? Why
[9] would you not send that or give the discovery to
[10] counsel?
[11] **THE COURT:** I'll tell you why. At various
[12] times during this case during the number of times it
[13] went before me, the defendant had indicated that she was
[14] an attorney admitted to practice first in Pennsylvania,
[15] then she said she wasn't. Then in California, then we
[16] found out that she wasn't. She wanted to go pro say.
[17] It may have been one of the times when the
[18] defendant indicated that she was going pro se. So it
[19] was passed to her I would assume because of that; is
[20] that correct?
[21] **MS. KOTCHIAN:** Yes, Your Honor.
[22] **MS. RAINEY:** I have mad respect for the
[23] Court, but it's not fair to assume. Where's the
[24] certified receipt that you get back?
[25] **THE COURT:** That's a whole other issue. I'm

[1] **THE COURT:** The letter that you have in front
[2] of you, was that sent both certified mail and regular
[3] first class mail?
[4] **MS. KOTCHIAN:** I mean, it's just a regular
[5] envelope.
[6] **THE COURT:** Was it either certified or just
[7] first class mail?
[8] **MS. KOTCHIAN:** With one of the cards on it.
[9] **THE COURT:** So it was sent just simply
[10] certified mail and return receipt requested, correct?
[11] **MS. KOTCHIAN:** I don't know if I requested a
[12] return receipt. It's just the sticker that you pull
[13] over so you can track it.
[14] **THE COURT:** Did you receive anything back from
[15] the post office indicating that it was -- if something
[16] is sent certified, it's sent certified for a reason,
[17] which is to indicate that the recipient received what
[18] was sent.
[19] **MS. KOTCHIAN:** It's for -- you can go online
[20] to usps.com and track it.
[21] **THE COURT:** Okay. So did you get a report
[22] from the United States Postal Service website indicating
[23] that it was, in fact, delivered to the address listed on
[24] the letter?
[25] **MS. KOTCHIAN:** I'm going to say no, Your

[1] not addressing that right now.
[2] **MS. RAINEY:** That's all I'm arguing.
[3] **THE COURT:** You asked why it was sent to her
[4] and why it wasn't an attorney. I believe you are the
[5] forth attorney that's been appointed in this case.
[6] **THE DEFENDANT:** Sixth.
[7] **MS. RAINEY:** Please be quiet.
[8] **THE COURT:** I stand corrected. You're the
[9] sixth attorney.
[10] **MS. RAINEY:** And I hear you. I agree with
[11] you. I saw what she did. None of that is relevant as
[12] to whether or not she can demonstrate with a certified
[13] receipt. If she can't, I'm asking that it not be
[14] allowed in.
[15] **THE COURT:** That's another issue.
[16] **MS. RAINEY:** Yes, sir.
[17] **THE COURT:** You asked why it was sent to the
[18] defendant and not to her attorney.
[19] **MS. RAINEY:** Yes, sir. I got you.
[20] **MS. KOTCHIAN:** Your Honor, I don't think I
[21] have the certified receipt. It was sent via first class
[22] mail to the address we have for the defendant. I
[23] obtained the documents from Sergeant John Evans, who
[24] verbally told me he also sent a copy directly to the
[25] defendant at her request.

[1] Honor. I don't remember looking for that.
[2] **THE COURT:** So it's the defense's position
[3] that the defendant never received that letter?
[4] **MS. RAINEY:** Yes, Your Honor.
[5] **MS. KOTCHIAN:** Oh, I did speak to prior
[6] counsel and she did have all those documents. I know
[7] that she did. So I don't know what the mix up is, but
[8] they -- I know she had all those documents. We
[9] discussed them.
[10] **THE DEFENDANT:** Can I say something?
[11] **MS. RAINEY:** No.
[12] **THE COURT:** You have a lawyer. Talk to your
[13] lawyer.
[14] **THE DEFENDANT:** I was cocounsel with --
[15] **THE COURT:** Stop. Talk to your lawyer.
[16] **MS. RAINEY:** Your Honor, there's no proof that
[17] she can offer that my client was served. For that
[18] reason alone, I'm asking the Court to prohibit and
[19] preclude that document. It's fundamental fairness.
[20] It's fair.
[21] **MS. KOTCHIAN:** Your Honor, his credibility is
[22] being impeached. I'm trying to show him the prior
[23] consistent statement, which the Commonwealth is
[24] permitted to do. I can give counsel an opportunity to
[25] review it, but there is -- I mean, precluding it is not

Page 73

[1] fair to the Commonwealth.
[2] **THE COURT:** Come to sidebar both of you.
[3] - - -
[4] (Whereupon, sidebar discussion was held off the record.)
[5] - - -
[6] **THE DEFENDANT:** This is so ridiculous.
[7] **THE COURT:** Just stop. I told you before
[8] that --
[9] **THE DEFENDANT:** I'm talking to my counsel.
[10] **THE COURT:** Well, you do it in a whispered
[11] tone. You don't interrupt the Court. I told you before
[12] that you're very close to being held in contempt. So
[13] please -- a word to the wise should be sufficient.
[14] I'm going to overrule the objection and give
[15] counsel a chance to review the document.
[16] **MS. RAINEY:** Yes, sir.
[17] **MS. KOTCHIAN:** Your Honor, I'm asking to
[18] bifurcate this matter due to another commitment that I
[19] have.
[20] **THE COURT:** How much more do we have in this
[21] case?
[22] **MS. RAINEY:** After him, her, and that's it.
[23] **THE COURT:** We're going to roll this until
[24] tomorrow.
[25] - - -

Page 75

[1]
[2] **CERTIFICATION**
[3]
[4] I HEREBY CERTIFY THAT THE PROCEEDINGS AND EVIDENCE
[5] ARE CONTAINED FULLY AND ACCURATELY IN THE NOTES
[6] TAKEN BY ME ON THE TRIAL OF THE ABOVE CAUSE, AND
[7] THIS COPY IS A CORRECT TRANSCRIPT OF THE SAME.
[8]
[9]
[10]
[11]
[12] **MONICA M. VAZQUEZ**
[13] **OFFICIAL COURT REPORTER**
[14]
[15]
[16]
[17]
[18] (The foregoing certification of this
[19] transcript does not apply to any reproduction of the same by
[20] any means unless under the direct control and/or supervision
[21] of the certifying reporter.)
[22]
[23]
[24]
[25]

Page 74

[1] (Proceedings concluded.)
[2] - - -
[3]
[4]
[5]
[6]
[7]
[8]
[9]
[10]
[11]
[12]
[13]
[14]
[15]
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

Page 76

[1]
[2]
[3]
[4]
[5]
[6]
[7]
[8]
[9]
[10]
[11]
[12]
[13]
[14]
[15]
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

[1]
[2]
[3]
[4]
[5]
[6]
[7]
[8]
[9]
[10]
[11]
[12]
[13]
[14]
[15]
[16]
[17]
[18]
[19]
[20]
[21]
[22]
[23]
[24]
[25]

Court Reporting System (Generated 2014/03/16 05:23:55)



Lawyer's Notes

